



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2010-0890; FRL – 9909-39-Region-6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution from Motor Vehicles, Vehicle Inspection and Maintenance and Locally Enforced Motor Vehicle Idling Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP). The revisions to the Texas Administrative Code (TAC) were submitted in 2002, 2005, 2006, 2008, 2010, 2011 and 2012. These revisions are related to the implementation of the state's motor vehicle emissions Inspection and Maintenance (I/M) program and the Locally Enforced Motor Vehicle Idling Limitations. The EPA is proposing to approve these revisions pursuant to the Clean Air Act (CAA).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2010-0890, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions.

- E-mail: Mr. Guy Donaldson at *donaldson.guy@epa.gov*. Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- Mail or Delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2010-0890. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser (6PD-L), Air Planning Section, telephone (214) 665-7128, fax (214) 665-6762, e-mail: *walser.john@epa.gov*.

The State submittal is also available for public inspection during official business hours, by appointment at the Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

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I. Background

A. What is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that air quality in the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. SIPs can be extensive, containing state regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations.

Each state must submit regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP.

The Texas SIP includes a variety of control strategies, including the regulations that control air pollution from motor vehicles such as the Inspection and Maintenance (I/M) program and Locally Enforced Motor Vehicle Idling Limitations.

B. What is Vehicle Inspection and Maintenance?

The Clean Air Act required ozone nonattainment areas classified moderate and higher to have vehicle inspection and maintenance programs to ensure that emission controls on vehicles are properly maintained. The Texas vehicle I/M program, which is referred to as the Texas Motorist Choice (TMC) Program, was approved by EPA in the Federal Register on November 14, 2001 (66 FR 57261).^{1,2}

The State's TMC program requires that gasoline powered light-duty vehicles, and light and heavy-duty trucks between two and twenty-four years old, that are registered or required to be registered in the I/M program area, including fleets, are subject to annual inspection and testing. Vehicles in Dallas, Tarrant, Collin, Denton, Ellis, Johnson, Kaufman, Parker, and Rockwall counties in the DFW area, and Harris, Galveston, Brazoria, Fort Bend, and Montgomery in the HGB nonattainment area that are 1995 and older are subject to an ASM-2

¹ On November 14, 2001 we approved the Texas Motorist Choice (TMC) Vehicle I/M program (66 FR 57261). We neglected to update table (e) in 40 CFR 52.2270 titled "*EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP*" to reflect this approval. While we note that this oversight created a flaw in the codification of the Texas SIP, a technical correction to the SIP is not needed at this time. Upon our approval of the State's revisions to the renamed I/M Program, the TMC Vehicle I/M program will appropriately address the correction in 40 CFR 52.2770(e), and will remedy the previous flaw.

² Previous actions taken toward full approval of the TMC I/M program include: a proposed conditional interim approval proposed on October 3, 1996 (61 FR 51651); an interim final conditional approval published on July 11, 1997 (62 FR 37138); and a direct final action on April 23, 1999 (64 FR 19910) to remove the conditions.

tailpipe test. Vehicles in those counties that are 1996 and newer receive the On-Board Diagnostic (OBD) test in place of the tailpipe test.

Currently, all I/M program vehicles in El Paso County are subject to the two-speed idle tailpipe test if they are model year 1995 or older, or an OBD test if they are model year 1996 or newer.

Vehicles in all program areas are also currently subject to a gas cap pressure check and an anti-tampering inspection as part of the statewide annual safety inspection.

C. What are the Texas Motor Vehicle Idling Limitations?

Texas idling rules implement idling limits for gasoline and diesel-powered engines in heavy-duty motor vehicles within the jurisdiction of any local government in the State that has signed a Memorandum of Agreement (MOA) with TCEQ. The Texas Motor Vehicle Idling Limits were approved by EPA into the SIP on April 11, 2005 (70 FR 18308), and revisions to the rule were approved by EPA on April 9, 2010 (75 FR 18061). The local government that signs the MOA is delegated the authority to enforce the rule within its jurisdiction. Participation in the vehicle idling program is voluntary and thus far, numerous cities and counties in the Central Texas Area (CTA) and North Central Texas Area (NCTA) have entered into this agreement.³ The vehicle idling program provides local governments the option of implementing the rules when additional control measures are needed to achieve or maintain attainment of the ozone NAAQS.

II. Overview of the State Submittals

³ For a current list of areas implementing idling restrictions in the NCTA, visit <http://www.nctcog.org/trans/air/programs/idling/index.asp>. For a current list of areas implementing idling restrictions in the CTA, visit <http://www.tceq.state.tx.us/implementation/air/sip/vehicleidling.html>.

A. The August 16, 2002 Submittal

On August 16, 2002, the TCEQ submitted SIP revisions to EPA that amended rules related to the implementation of the state's motor vehicle emissions I/M program. These revisions modified the testing network design, emission test fees, incentives to inspection stations for early participation in the I/M program, equipment specifications and requirements related to vehicle waivers and test on resale. Additionally, the TCEQ repealed the provisions for waivers and extensions for inspection requirements because the rules are duplicative of Department of Public Safety (DPS) waiver rules in 37 TAC §23.93. As discussed further in Section III of this proposal, Texas subsequently submitted the DPS waiver rules for SIP approval.

B. The December 30, 2002 Submittal and January 20, 2006 Update

On December 30, 2002, the State submitted SIP revisions that further amend the vehicle I/M program and the Accelerated Vehicle Retirement Program. These revisions include the continuation of two-speed idle (TSI) testing in the El Paso program area; the removal of requirements for OBD testing; the addition of a contingency measure that the El Paso program area will implement OBD testing should the Commission publish notice in the Texas Register of a determination that contingency measures are necessary in order to maintain attainment of the NAAQS; and the deletion of the requirement that all emissions inspection stations offer both TSI and OBD tests until the contingency measure is triggered. The State submitted to EPA supplemental technical clarification information in a letter dated January 20, 2006 and officially withdrew from EPA's consideration the revisions in the December 30, 2002 submittal that moved OBD testing to a contingency measure (please see Docket I.D. EPA-R06-OAR-2011-0890). Prior to the December 30, 2002 rule revisions and I/M SIP revision, TSI was to continue

and OBD testing was scheduled to commence in El Paso in 2003. The 2005 SIP revisions (see November 14, 2005 submittal below) require TSI testing to continue and OBD testing to commence in El Paso in January 2007. Therefore, the State indicated in the January 2006 letter that the 2002 revisions that establish OBD as a contingency measure were no longer necessary. Based on the State's January 20, 2006 letter, the only remaining provisions that the State did not withdraw were changes to 114.50(a) and (b) concerning vehicle emission inspection requirements.

C. The November 14, 2005 Submittal

On November 14, 2005, the State submitted SIP revisions to the existing vehicle I/M program. These revisions amended the I/M program for all gasoline-powered motor vehicles two through twenty four years old that are registered and primarily operated in El Paso County. The amendments require implementation of OBD testing on all OBD-equipped 1996 and newer model year vehicles, and continue TSI testing of pre-1996 model year vehicles. The amendments require all emissions test stations in the El Paso program area to offer both TSI testing and OBD testing to the public beginning January 1, 2007. Additionally, the amendments update the vehicle emissions testing equipment specifications used in all Texas I/M program areas to include a United States Environmental Protection Agency OBD communication component, known as a controller area network (CAN).

D. The May 15, 2006 Submittal

On April 26, 2006, the State adopted and on May 15, 2006, submitted to EPA for approval into the SIP revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter J, Operational Controls for Motor Vehicles; Division 2, Locally Enforced Motor Vehicle Idling Limitations. On April 9, 2010, EPA approved these revisions to the motor

vehicle idling limits into the SIP, with the exception of one revision to section 114.512 and one revision to section 115.517 (75 FR 18061). The revision to section 114.512 added a provision that expired on September 1, 2007, prohibiting drivers using a vehicle's sleeper berth from idling in a school zone or within 1,000 feet of public school during its hours of operation. The revision to section 114.517 added an exemption from the motor vehicle idling limits for a motor vehicle when idling is necessary to power heating and air conditioning during a government-mandated rest period. EPA is now taking action on these remaining revisions from the May 15, 2006 submittal.

E. The February 28, 2008 Submittal

On January 30, 2008, the State adopted and on May 15, 2006, submitted further revisions to the Locally Enforced Motor Vehicle Idling Limitations. On April 9, 2010, EPA approved these revisions to the motor vehicle idling limits into the SIP, with the exception of one further revision to section 114.512 and section 114.517. The revision to section 114.512 expanded the prohibition on drivers using a vehicle's sleeper berth to idle in a school zone or within 1,000 feet of a public school to also apply in a residential area or within 1,000 feet of a hospital, and also extended the prohibition's expiration date to September 1, 2009. The revision to section 114.517 narrowed the exemption for a motor vehicle when idling to power heating or air conditioning during a government mandated rest period such that the exemption applies only when the motor vehicle is not within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available, and extended the exemption's expiration date to September 1, 2009. EPA is now taking action on these remaining revisions from the February 28, 2008 submittal.

F. The December 22, 2010 Submittal

On December 22, 2010, the State submitted SIP revisions concerning the requirements for low-volume vehicle emissions inspection stations and the vehicle emissions inspection analyzer specifications. The revisions streamline the process for implementing minor non-programmatic modifications to the vehicle emissions inspection analyzer specifications and include various non-substantive changes to apply appropriate and consistent use of acronyms, section references, structure, formatting and certain terminology.

G. The August 30, 2011 Submittal

On August 30, 2011, the State submitted SIP revisions concerning the requirements for Locally Enforced Motor Vehicle Idling Limitations. The revisions allow enforcement of heavy-duty vehicle idling year round; removes the expired prohibition for drivers using sleeper berths to idle in residential areas, school zones, and near hospitals; removes expiration dates that are no longer applicable, removes the duplicative exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and replaces it with a new exemption for armored vehicles; and retains the exemption for a motor vehicle when idling for heating or air conditioning while a driver is using the vehicles sleeper berth for a government-mandated rest period, and is not within two miles of a facility offering external heating or air conditioning. As noted above, this expired date was removed from the exemption.

H. The August 31, 2012 Submittal

On August 31, 2012, the State submitted SIP revisions that further amend the requirements for Locally Enforced Motor Vehicle Idling Limitations. The revisions create a new exemption for motor vehicles that have a gross vehicle weight rating greater than 14,000 pounds and are equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or

compressed natural gas engine that has been certified by the EPA or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling.

III. EPA's Evaluation of the Submittals

The revisions proposed to be approved address 30 TAC 114, Subchapter A (Control of Air Pollution from Motor Vehicles), Subchapter C (Vehicle Inspection and Maintenance), and Subchapter J, (Operational Controls for Motor Vehicles). We have prepared a Technical Support Document (TSD) for this proposal which details our evaluation. Our TSD may be accessed online at <http://www.regulations.gov>, Docket No. EPA-R06-OAR-2010-0890.

Our primary consideration for determining the approvability of the TCEQ's submittals is whether these proposed actions comply with section 110(l) of the Act. Section 110(l) of the Act provides that a SIP revision must be adopted by a State after reasonable notice and public hearing. Additionally, CAA § 110(l) states that the EPA cannot approve a SIP revision if that revision would interfere with any applicable requirement regarding attainment, reasonable further progress (RFP) or any requirement established in the CAA. In the case of the I/M revisions, we must also consider whether these revisions comply with our inspection and maintenance requirements at 40 CFR part 51, Subpart S and 40 CFR 85.2222 (Federal I/M Rules). Our evaluation of the submittals found that the SIP revisions were adopted by the State after reasonable notice and public hearing, and that approval of the revisions would not interfere with any CAA requirement.

A. The August 16, 2002 Submittal

The State adopted revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter A, Definitions, Section 114.2; and Subchapter C, Vehicle Inspection and

Maintenance, Sections 114.50 – 114.53. The SIP revisions contain a revised narrative, rules, and supporting documentation as outlined in the requirements of the Federal I/M rules.

Section 114.2 identifies and defines the terms used in the I/M program. Sections 114.2(3)-(13) are renumbered to account for the addition of 114.2(3) which adds a definition for low volume emissions inspection station. There is no federal definition of the term “low volume emissions inspection station.” We propose to find this term approvable because it does not conflict with any federal requirement. Section 114.2(5), previously 114.2(4), is modified to add new text “all references to OBD should be interpreted to mean the second generation of this equipment, sometime referred to as OBDII.” This text ensures that the most recent technology is available for testing and consistent with federal requirements.

These revisions are ministerial and or add clarification and we therefore propose that they are approvable.

Section 114.50 establishes vehicle emissions inspection requirements. Section 114.50(a)(2)(A), (a)(3)(A), (a)(4)(A), (a)(4)(D), (a)(4)(F), and (a)(5)(A) are modified to delete the qualifier “If OBD data cannot be collected from the vehicle, an EPA-approved tailpipe emissions test will be used.” These revisions cover the DFW area, DFW extended area, and the HGA areas. Throughout Section 114.50, that statement is deleted because it is rare that OBD data cannot be collected from vehicles. In those instances, the station will check the OBD malfunction indicator light (MIL), one of the primary pass/fail criteria for OBD inspections. This provision is discretionary and its removal will not have a significant impact on the effectiveness of the program because TCEQ estimates that less than 1.0% of the testable OBD fleet will be unable to process data to the OBD analyzer. We propose to find that this revision is approvable

because it will not interfere with attainment and reasonable further progress or any other applicable requirement.

Section 114.50(a)(2)(C), 114.50(a)(3)(C) and 114.50(a)(4)(C) add new text indicating that all emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test to the public, except low volume emissions inspection stations. The phrase “if OBD data cannot be collected from the vehicle, an EPA-approved tailpipe emissions test will be used” was essentially moved from 114.50(a)(2)(A), (B), and (C) and included in sections 114.50(a)(2)(C), 3(C) and 4(C) language stating that the inspection stations shall offer both the ASM-2 test and the OBD test. We propose to find that these revisions are approvable because the language does not conflict with any federal requirements. Section 114.50(a)(5)(C) is new text stating that “all vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and the OBD test to the public.”⁴ This revision ensures that inspections stations in El Paso are able to comply with the federal requirement to conduct OBD testing on model year 1996 and newer light-duty vehicles (40 CFR Part 51, Subpart S and 40 CFR 85.2222). Section 114.50(b)(5) is modified to delete the minimum expenditure waiver and parts availability time extension and adds documentation requirements for waivers or time extension. Section 114.50(b)(6) is modified to add the phrase “or in any county adjacent to a program area” to the section. The proposed revision extends the current remote sensing program to include vehicles commuting into the area from neighboring counties. We propose to find that this revision is also approvable because it increases required participation in the program beyond the federal requirements.

⁴ This language was repealed in the December 30, 2002 submittal when Texas made OBD testing in the El Paso area a contingency measure, as discussed in Section III.B of this proposal. However, this concept was reinstated at 114.50(a)(4)(D) in the November 14, 2005 submittal when Texas added OBD testing back into the SIP for 1996 and newer vehicles in the El Paso area starting in 2007, as discussed in Section III.C of this proposal.

Section 114.50(b)(7) is a new section adding new requirements for vehicles resold into a program area from areas not in an I/M program area. The revision adds a test-on-resale component to the I/M program and requires proof that the vehicle has passed an emissions inspection within 90 days before transfer in order to be eligible for title receipt or registration. The provision provides an exception for all 1996 and newer vehicles with less than 50,000 miles. This revision captures the requirement to test those vehicles that are registered in a county without the I/M program that may be resold into a program area. We propose to approve this revision because we believe it should result in additional emission reductions by ensuring vehicles sold within the nonattainment areas have passed an emissions test. Other revisions to Section 114.50 are ministerial in nature and include renumbering.

Section 114.51 identifies the equipment evaluation procedures for vehicle exhaust gas analyzers. Section 114.51(a) is modified to update the vehicle analyzer specification date from November 1, 2000 to June 15, 2001.

Section 114.52, Waivers and Extensions for Inspection Requirement is repealed because the requirements are duplicative in DPS rules, 37 TAC 23.93, relating to vehicle emission inspection and maintenance requirements. The state submitted those rules in the November 14, 2005, submittal discussed further in Section III.C of this proposal. The state also proposed a new Section 114.52, Early Participation Incentive Program (EPIP). More detail on each of these revisions is in the Technical Support Document (TSD), which is provided in the docket for this rulemaking. Based on the subsequent submittal of the equivalent rules at 37 TAC 23.93, we propose to find that the repeal of Section 114.52 is approvable.

New Section 114.52 established the Early Participation Incentive Program, its purpose, eligibility, program acceptance, enrollment and other program requirements to ensure an

adequate number of emissions inspection stations were open to the public during the early implementation of the program. The incentive program would be available to the first 1,000 eligible emissions inspection stations in Dallas, Tarrant, Denton, Collin, and Harris Counties or adjacent counties. The program would provide emissions inspection station owners or operators with a financial assurance if ASM-2 testing were to be terminated within three years of the program start date on May 1, 2002. These changes enhanced the program, provided financial assurance and increased the availability of inspection stations to the public. Because the I/M program was fully implemented, this section was repealed by TCEQ in a future adoption (November 18, 2010). Please see the discussion of the December 22, 2010 submittal in Section III of this proposal and in Section C6 of the TSD for more detail.

Section 114.53 establishes inspection and maintenance fees. Section 114.53(a)(2) is modified to change the amount of fees collected by the inspection stations in El Paso County and specifies the amount remitted to Department of Public Safety (DPS), depending on the county adoption of a resolution regarding Low Income Repair Assistance Program (LIRAP) participation. Section 114.53(a)(3) is modified to update the amount of fees collected by the inspection stations in the Dallas/Ft Worth (DFW) Program area. Section 114.53(a)(4) is modified to update the amount of fees collected by the inspection stations in the Houston/Galveston/Brazoria (HGB) program area.

This submittal was adopted consistent with the public notice SIP requirements of CAA §110(l). We propose to find that these revisions are approvable because they add specificity to the program. Further, these revisions do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement, are

consistent with EPA's rules for I/M programs at 40 CFR part 51, Subpart S and 40 CFR 85.2222, and do not result in emissions increases.

B. The December 30, 2002 Submittal and January 20, 2006 Update

On December 4, 2002, the State adopted revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter C, Vehicle Inspection and Maintenance and Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program, Division 1, Vehicle I/M program and Section 114.50. The amendments include the continuation of TSI testing in the El Paso area, and instead of requiring OBD testing of 1996 and newer cars to commence, made OBD testing in the El Paso area a contingency measure to be implemented if the area violated the ozone standard.

The State later submitted to EPA supplemental technical clarification information in a letter dated January 20, 2006 and withdrew from EPA consideration the revisions in the December 30, 2002 submittal that moved OBD testing to a contingency measure (please see Docket I.D. EPA-R06-OAR-2010-0890). The 2005 SIP revisions (see section below) require TSI testing to continue on older cars and OBD testing to commence in El Paso in January 2007 for 1996 and newer cars. Therefore, the State indicated that the 2002 revisions are no longer necessary.

EPA's evaluation of the December 30, 2002 submittal is limited to the provisions in that submittal that the State did not withdraw, which are 114.50(a) and (b) concerning vehicle emissions inspection requirements. Section 114.50(a) is revised to clarify that program areas are defined in section §114.2. Other changes to Section 114.50 are ministerial and or offer clarifying language.

The SIP revision contains a revised narrative, rules, and supporting documentation as outlined in the requirements of the Federal I/M Rules. This submittal was adopted consistent with the public notice SIP requirements of CAA §110(l). We propose to find that these revisions are approvable because they either clarify the requirement or are non-substantive in nature. The revisions in this submittal do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement and are consistent with EPA's rules for I/M programs at 40 CFR part 51, Subpart S and 40 CFR 85.2222. Additional details are available in the TSD for the rulemaking.

C. The November 14, 2005 Submittal

The State adopted revisions to 30 TAC Chapter 114, Sections 114.2, 114.50, 114.51 and 114.53. The amendments revise the existing I/M program for all covered gasoline-powered motor vehicles in El Paso County. The revisions require implementation of OBD testing of all OBD-equipped 1996 and newer model year vehicles, and continue TSI testing of pre-1996 model year vehicles. Also, the revisions require all emissions test stations in the El Paso program area to offer both TSI testing and OBD testing to the public beginning January 1, 2007. Additionally, the revisions update the vehicle emissions testing specification used in all Texas I/M program areas to include an EPA OBD communication component, known as controller area network (CAN) and other changes to improve the enforceability of the program. A detailed discussion of the changes is contained in the TSD.

It is worth pointing out that in section 114.50(b)(2) there are several non-substantive editorial changes. However, section 114.50(b)(2) should not be part of the approved SIP because it deals with federal facilities, so we are not acting on this revision at this time.⁵

In addition to the changes to the I/M rules, corresponding changes to the SIP narrative are included in the SIP submittal. This includes Attachment A, “Technical Supplement, Inspection/Maintenance (I/M) Performance Standards for Low-Enhanced Program Areas (EPA Flexibility Amendments), October 26, 2005, Rule Project No. 2005-026-114-EN, Technical Supplement.” The submittal also includes revisions to Appendix K “Specification for Vehicle Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program”; Appendix G “Specifications for On-Board Diagnostics II (OBD-II) Analyzer for Use in the Texas Vehicle Emissions Testing Program”; and Appendix I “Rules and Regulations for Official Vehicle Inspection Stations and Certified Inspectors, Texas Department of Public Safety, dated January 1, 2003.” Appendix I includes the DPS rules for waiver and extensions for inspection requirements that were repealed from Section 114.52 in Texas’s August 16, 2002 submittal, as previously discussed in Section III.A of this proposal. The State repealed those requirements because they are duplicative of those contained in DPS rules 37 TAC §23.93. In a comment letter dated September 19, 2001, EPA requested that Texas submit the waiver rules in 37 TAC §23.93

⁵ Texas revised its regulations to include EPA’s Federal facilities reporting requirements found in 40 CFR 51.356(a)(4). This particular Federal regulation requires an approvable State I/M program to have Federal facilities operating vehicles in the I/M program areas(s) report certification of compliance to the State. This requirement appears to be different than those for other non-Federal groups of affected vehicles. EPA did not require the State to implement or adopt this reporting requirement dealing with Federal installation within I/M areas at the time of program approval. The Department of Justice recommended to EPA that this particular Federal regulation be revised because it appears to grant States authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation or to require it for an approvable I/M program, if it is not constitutionally authorized. EPA intends to address this provision in the future and will review State I/M SIPs with respect to this issue whenever EPA finalizes a new rule. At this time, EPA will not approve or disapprove the specific requirements of 30 TAC 114.50(b)(2), which apply to Federal facilities, as part of the Texas I/M SIP.

to replace the repealed 114.52 in the SIP. In a clarification letter from TCEQ on January 22, 2014, TCEQ explained that the DPS rules contained in Appendix I of the November 14 2005, submittal fully replace the waiver requirements that TCEQ repealed from 114.52 in the August 16, 2002 submittal (please see Docket I.D. EPA-R06-OAR-2011-0890). Texas's submittal of the DPS rules in Appendix I on the November 14, 2005, meets the requirement for a SIP submittal. These appendices are included in this rulemaking for proposed approval.

The SIP revision contains a revised narrative, rules, and supporting documentation as outlined in the requirements of the Federal I/M Rules. This submittal primarily replaces the two speed idle test with the OBD testing for 1996 and newer vehicles in the El Paso area starting in 2007. OBD testing is more effective for newer vehicles. This submittal was adopted consistent with the public notice SIP requirements of CAA §110(l). We propose to find that these revisions are approvable because they either make the program more effective or are non-substantive in nature. Further, these revisions do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement and are consistent with EPA's rules for I/M programs at 40 CFR part 51, Subpart S and 40 CFR 85.2222.

D. The December 22, 2010 Submittal

This submission includes a revision to the I/M program to improve implementation. The revisions to the I/M program, as detailed below do not change the effectiveness of the program but ease implementation. At the same time the State adopted changes to the Low Income Repair Assistance Program. The changes to the LIRAP program were not included as part of the SIP revision, however, and thus are not being addressed in this action.

The revision to Section 114.2(4) changes the definition of low-volume emission inspection station to add the condition that the station "meets all criteria for obtaining a low-

volume waiver from the Texas Department of Public Safety” and deletes the text “performs on-board diagnostics (OBD) testing only and does not exceed 1,200 OBD tests per calendar year.” This limit on tests per calendar year is contained in the Texas Department of Public Safety Manual entitled “Vehicle Emissions Inspection & Maintenance Rules & Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors.”

The revisions to Section 114.51(a) removes the specific date of the version of the “Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program” and replaces it with “most recent version of the.” Sections 114.51(a) and (b) contain additional non-substantive revisions.

This submission includes the repeal of the Early Participation Incentive Program. The program was meant to encourage owners and operators of emission inspection stations to participate early in the purchase of ASM-2 equipment to ensure an adequate number and distribution of stations would be available by the program start date. The EPIP expired in all I/M program areas on May 1, 2008. This incentive program is no longer needed and is not required by the EPA’s I/M rules, and therefore, we propose to find that the repeal of the program is approvable.

The SIP revision contains a revised narrative, rules, and supporting documentation as outlined in the requirements of the Federal I/M Rules. This submittal was adopted consistent with the public notice SIP requirements of CAA §110(l), and the revisions in this submittal do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement. We propose to find that these revisions are approvable because they either clarify the requirement or are non-substantive in nature.

E. The August 30, 2011 Submittal (including the May 15, 2006 and February 28, 2008 Submittals)

On July 20, 2011, the State adopted and on August 30, 2011, submitted revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter J, Operational Controls for Motor Vehicles; Division 2, Locally Enforced Motor Vehicle Idling Limitations. The SIP submittal revises sections 114.512 (Control Requirements for Motor Vehicle Idling) and 114.517 (Exemptions).

The submittal revises section 114.512(a) by removing the vehicle idling program's enforcement period of April 1 through October 31 of each calendar year to allow enforcement of the program year-round. The daily maximum 8-hour ozone average can reach moderate levels even outside of the ozone season in the areas currently participating in the vehicle idling program, and moderate ozone levels may pose health concerns for certain sensitive groups. The EPA is proposing to approve this revision because year-round enforcement of the vehicle idling program is expected to result in emission reductions outside of the ozone season that will help provide additional protection from exposure to moderate ozone levels for sensitive groups in the local jurisdictions participating in the program. Further, year round applicability will likely improve program effectiveness as operators do not get out of the habit of idle reduction. The second revision to section 114.512 eliminates subsection (b), which expired on September 1, 2009. Subsection (b) prohibited drivers using a vehicle's sleeper berth from idling in a residential area, school zone, within 1,000 feet of a hospital, or within 1,000 feet of public school during hours of operation. As we explained in the April 9, 2010 (75 FR 18061) rulemaking in which EPA approved previous revisions to the vehicle idling limits into the SIP, EPA did not take action on the May 15, 2006 revision that added subsection (b) under section 114.512 or the

February 28, 2008 revision that subsequently revised subsection (b), because at the time the EPA took action on the May 15, 2006 and February 28, 2008 submittals, the expiration date of September 1, 2009 associated with subsection (b) had already passed such that subsection (b) was no longer in effect. Therefore, the August 30, 2011 revision that eliminates subsection (b) and that is before us to take action on does not constitute a change to the currently approved SIP. We are now proposing to approve the State Rules into the SIP without subsection (b) as codified in the August 30, 2011 submission. This action addresses the May 15, 2006 revision that added subsection (b) under section 114.512; the February 28, 2008 revision that subsequently revised subsection (b) by expanding the prohibition and extending its expiration date; and the August 30, 2011 revision that eliminates subsection (b). Although the net effect of these revisions does not constitute a change to the currently approved SIP, we are making clear that these previous revisions are addressed by this action to avoid any potential future confusion that may result if we do not take action on these revisions at this time.

Section 114.517 (Exemptions) is also revised to eliminate language from paragraphs (1) and (2), which contain duplicative language.

The submittal also revises section 114.517 by adding a new exemption under paragraph (2) that applies to the primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety in an armored vehicle while the employee remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded. Additionally, paragraph (12) under section 114.517 is revised to remove the expiration date of the exemption that applies to a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two miles of a facility offering external heating and air conditioning

connections at a time when those connections are available. This revision allows for the currently expired exemption under paragraph (12) to be retained. We note the exemption under paragraph (12) has not been approved into the Texas SIP because when EPA took action on the May 15, 2006 and February 28, 2008 SIP submittals that added and subsequently revised this exemption on April 9, 2010 (75 FR 18061), the exemption was no longer effective because the September 1, 2009 expiration date of the exemption had passed. We are now taking action on the May 15, 2006 and February 28, 2008 revisions that added and subsequently revised the exemption under current paragraph (12), and we are also taking action on the August 30, 2011 revision that further revises the exemption.

The August 30, 2011 submittal contains a technical analysis under CAA section 110(l) to demonstrate that approving into the SIP the new exemption for armored vehicles and the exemption for drivers using the vehicle's sleeper berth for a government-mandated rest period will not interfere with any applicable requirement concerning attainment and reasonable further progress in the Dallas/Fort Worth nonattainment area. The State's 110(l) analysis explains that the emissions increases that may be expected as a result of the new exemption for armored vehicles will not interfere with attainment or reasonable further progress in the SIP⁶ because the revision to section 114.512 to allow year-round enforcement is expected to provide additional emissions reductions in the months that are currently not subject to enforcement and to offset the emissions increases due to the new exemption for armored vehicles. Additionally, the 110(l) analysis explains that the Locally Enforced Motor Vehicle Idling Limitations are part of the Voluntary Mobile Source Emission Reduction Program (VMEP) commitments in the Dallas-Fort Worth Attainment Demonstration SIP (DFW Attainment SIP) revision for the 1997 8-hour ozone

⁶ The Locally Enforced Motor Vehicle Idling Limits are included as an emission reduction measure in the Dallas-Fort Worth Attainment Demonstration SIP for the 1997 8-hour ozone NAAQS and the Austin Early Action Compact (EAC) SIP for the 1997 8-hour ozone NAAQS.

NAAQS, and that based on the North Central Texas Council of Governments (NCTCOG) estimates, the DFW area exceeded the NO_x and VOC emission reductions required as part of the VMEP commitments.⁷

The Texas SIP also includes the locally enforced idling limits in the Austin area as part of the Early Action Compact SIP. The Austin area is currently meeting the 1997 and 2008 ozone standards even considering the exemption for armored vehicles has been in place at the State level since 2011 and the exemption for motor vehicles idling during a government mandated rest period has been in place since 2006.⁸ Therefore, EPA believes it is reasonable to conclude that this additional exemption does not interfere with maintenance of the standard in the Austin Area. More detail is in the TSD, which is provided in the docket for this rulemaking. Thus, the 110(l) analysis demonstrates that any potential emissions increases resulting from the exemption for armored vehicles and the exemption for drivers using the vehicle's sleeper berth for a government-mandated rest period will be offset by the excess emissions reductions achieved by the overall VMEP.

Therefore, we are proposing to approve into the SIP the new exemption under paragraph (2) for armored vehicles. We are also proposing to approve into the SIP the following: (1) the revision from the May 15, 2006 submittal that amended section 114.517 by adding the exemption for a motor vehicle when idling is necessary to power a heater or air conditioner while

⁷ The CAA section 110(l) demonstration makes reference to the NCTCOG's VMEP accounting for the Locally Enforced Idling Restrictions without providing documentation of this in the SIP submittal. However, this documentation was provided to EPA by TCEQ via email on March 25, 2011, in response to the comment letter provided by EPA during the State's public notice and comment period (please see the "Written and Oral Testimony" section of the August 30, 2011 SIP submittal- the reference number for EPA's written comments is W-123). The documentation consists of a report from the NCTCOG dated August 26, 2010. The report quantifies the emissions reductions benefits achieved by the VMEP and other local programs in the DFW Attainment SIP as of March 2009. The report quantifies the emissions reduction benefits achieved by the overall VMEP and by each component of the VMEP. A copy of the TCEQ's March 25, 2011 email to EPA and a copy of the NCTCOG's August 26, 2010 report can be found in the docket for this proposed rulemaking.

⁸ The State first adopted the exemption for motor vehicles idling during a government mandated rest period in 2006, but the exemption eventually expired and in 2011 the State adopted revisions that eliminated the expiration date associated with the exemption.

a driver is using the vehicle's sleeper berth for a government-mandated rest period; (2) the February 28, 2008 SIP revision that narrowed the exemption by adding language such that the exemption applies only when the motor vehicle is not within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available; and (3) the August 30, 2011 revision that removes the September 1, 2009 expiration date of the exemption, effectively retaining the exemption.

This submittal was adopted consistent with the public notice SIP requirements of CAA §110(l). We are proposing to approve these revisions to section 114.517 because the State has demonstrated that the approval of these exemptions into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress. Any excess emissions reductions achieved in the DFW area that are used as substitute emissions reductions to offset any potential increase in emissions resulting from these new exemptions cannot be used as substitute emissions reductions to offset a shortfall in any other control measure in the SIP, or otherwise be used as a SIP credit for any other emissions reduction control measure.

F. The August 31, 2012 Submittal

This submittal adopted on August 8, 2012, provided further revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles; Subchapter J, Operational Controls for Motor Vehicles; Division 2, Locally Enforced Motor Vehicle Idling Limitations. The SIP submittal makes revisions to section 114.517 (Exemptions).

The submittal revises section 114.517 by adding a new exemption for a motor vehicle that has a gross vehicle weight rating greater than 14,000 pounds and that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the EPA or a state environmental agency to emit no more than

30 grams of NO_x per hour when idling. The SIP submittal also re-numbers the exemptions under section 114.517 to account for the new exemption.

Information provided in the submittal, along with additional technical analysis by EPA under CAA section 110(l) demonstrates that approval into the SIP of the new exemption for motor vehicles with a gross vehicle weight rating greater than 14,000 pounds and equipped with certain low NO_x emitting engines will not interfere with any applicable requirement concerning attainment and reasonable further progress. The State's analysis explains that engines certified to emit no more than 30 grams of NO_x per hour when idling are significantly cleaner than the uncontrolled vehicles currently in use that emit between 135 and 170 grams of NO_x per hour when idling. These "clean idle engines" emit lower NO_x emissions both while idling and while in transit. Model year 2008 and newer vehicles with clean idle engines actually emit less than idle reduction technologies that are allowed under the rule as auxiliary power units (APU). Thus, the new exemption will provide drivers with a new option that would enable them to comply with the motor vehicle idling limits, and provide an incentive for replacing older, higher-emitting vehicles with the newer clean idle engines. Without this exemption, drivers of vehicles with clean idle engines may use an idle reduction technology, such as an APU, to comply with the motor vehicle idling limits when they find it necessary to idle for longer than 5 minutes.⁹ An APU is a commonly used idle reduction technology used in heavy duty trucks to supply cooling, heating, and electrical power for other applications while the main truck engine is turned off, thereby enabling drivers to comply with the motor vehicle idling limits. The type of clean idle engine the new exemption applies to would emit no more than 30 NO_x grams per hour (g/hr) when idling, while an APU in the larger size range (23 horsepower) can be expected to emit

⁹ For a list of EPA SmartWay verified idle reduction technologies, please visit <http://epa.gov/smartway/forpartners/technology.htm#tabs-4>.

approximately 53 NOx g/hr and one in the smaller size range (14 horsepower) can be expected to emit approximately 32 NOx g/hr.¹⁰ Without the new exemption, drivers of vehicles with clean idle engines could potentially choose to use an APU to comply with the motor vehicle idling limits by shutting down the clean idle engine and operating only the APU, potentially resulting in higher NOx emissions than if the vehicle with the clean idle engine is idled instead. Therefore, we believe the new exemption will provide drivers with a new option enabling them to comply with the motor vehicle idling limits, and will not result in backsliding. We are proposing to approve the new exemption for motor vehicles with a gross vehicle weight rating greater than 14,000 pounds and equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the EPA or a state environmental agency to emit no more than 30 grams of NOx per hour when idling.

This submittal was adopted consistent with the public notice SIP requirements of CAA §110(l). The EPA proposes to approve the above revisions to the Locally Enforced Motor Vehicle Idling Limitations into the SIP because they do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement and because they allow for clarity and consistency of the exemptions and control requirements for motor vehicle idling.

IV. Proposed Action

The EPA is proposing to approve, revisions to regulations, and updates to the I/M portion of the mobile source strategies that control emissions from motor vehicles in Texas. We are proposing to approve revisions to the following sections within Chapter 114 of Title 30 of the Texas Administrative Code (TAC): 114.1, 114.2, 114.4, 114.50, 114.51, 114.52, 114.53,

¹⁰ Please see our TSD for a more detailed discussion of these estimates.

114.211, 114.212, 114.213, 114.214, 114.215, 114.216, 114.217, 114.219, 114.512, and 114.517.

We are also proposing to approve revisions to 37 TAC 23.93. We are proposing to approve the following SIP revisions, including narratives, that revise the I/M and vehicle idling programs:

August, 16, 2002, December 30, 2002, November 14, 2005, May 15, 2006, February 28, 2008,

December 22, 2010, August 30, 2011 and August 31, 2012. We are proposing to approve these

SIP revisions except for the revisions to 114.50(b)(2) as explained in the discussion of the

November 15, 2005 submittal. The EPA is proposing to approve these revisions in accordance

with sections 110 and 182 of the Act and EPA's regulations and consistent with EPA guidance.

V. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 27, 2014.

Ron Curry,
Regional Administrator, Region 6.

[Billing Code: 6560-50-P]

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